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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20341

B-194927

December 13, 1979

The Honorable Richardson Preyer
House of Representatives

Dear Mr. Preyer:

This is in reply to your letter of May 15, 1979, concerning the inquiry of your constituent, Mr. Jack F. Steelman, as to whether our decision, Matter of Faye Abu-Ghazaleh, 56 Comp. Gen. 199 (1976), is still valid in light of the repeal of 5 U.S.C. § 5337 by section 801(a)(2) of the Civil Service Reform Act of 1978, 92 Stat. 1221. For the reasons discussed below we find that our decision remains valid.

The statute in effect when Abu-Ghazaleh was decided, 5 U.S.C. § 5337, provided that under certain circumstances an employee reduced in grade could retain his previous rate of pay for 2 years if the reduction in grade was not at his request. In Abu-Ghazaleh, a civil service employee applied for and received a transfer to a new position where her initial grade level was lower than that of her former job. However, the new job had promotion possibilities so that after some time she could obtain a higher grade than she did in her former position. We obtained advice from the Civil Service Commission, which was authorized to issue regulations supplementing 5 U.S.C. § 5337. In accordance with the advice received, we held that where a civil service employee changed to a lower grade with higher grade potential pursuant to an employee development program in order to receive specific experience, even though the employee applied for the change in grade, the employee was entitled to pay retention under section 5337.

Section 5337 of title 5 (1976) was repealed by the Civil Service Reform Act of 1978, Pub. L. 95-454, October 13, 1978, 92 Stat. 1221, because it was replaced by 5 U.S.C. §§ 5361-5366. The new sections contain authority for pay retention in all situations covered by the former pay retention provisions. See H.R. Rep. No. 95-1403, 95th Cong., 2nd Sess. 70 (1978).

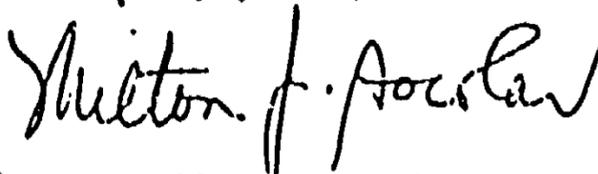
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The Office of Personnel Management (OPM) is required to prescribe regulations to carry out the provisions of the Civil Service Reform Act. 5 U.S.C. § 5365. Section 536.212(a)(3) of the interim regulations issued by OPM, 44 Fed. Reg. 11745 (1979), provides for pay retention for an employee whose pay would otherwise be reduced:

"As a result of the placement of the employee in a formal employee development program generally utilized Government-wide: Upward Mobility, Apprenticeship, and Career Intern Programs; or as the result of placement in a position which the agency has determined is hard to fill * * *."

Therefore, our holding in Abu-Ghazaleh is not altered by virtue of the passage of the Civil Service Reform Act of 1978.

Sincerely yours,



For the Comptroller General
of the United States